S.B. CIVIL MISC. APPEAL NO. 54/1995
(Smt.Kamla & Ors. Vs. Prem Sagar & Anr.)

Date of Order :: 4th May 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.G.S.Rathore for
Mr.Deelip Kawadia, for the appellants.
Mr.Sanjeev Johari, for the respondent No.2.

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The claimants have preferred this appeal seeking enhancement over the amount of Rs.63,000/- together with interest at the rate of 12% per annum awarded by the Motor Accidents Claims Tribunal (Addl. District Judge No.2), Udaipur in Claim Case No.74/1991 on account of accidental death of Ranchhod Lal, about 25 years of age, husband of appellant No.1 and son of appellants Nos.2 and 3.

In a vehicular accident that occurred on 25.02.1991 on National Highway No.8 near Kherwara bus stand, , the victim Ranchhod Lal was hit by the offending truck bearing registration No.PAT 5447; and succumbed to the injuries. The claimants, wife and parents of the victim sought compensation with the submissions that he was about 25 years of age and was earning Rs.30/- per day in daily wages and another Rs.500-600/- per month in milk vending.

After receiving the replies, framing necessary issues and taking evidence, the Tribunal decided in issue No.1 that the accident occurred for rash and negligent driving of the truck bearing number PAT 5447; and held the non-applicants related with the said vehicle liable for compensation.

Taking up quantification of compensation in issue No.2 the Tribunal noticed that the wife of deceased stated that he was contributing about Rs.200-300/- per month to the household; and that they were not having any children. Father of the deceased admitted that he was earning separately and that he had three sons. It was also stated by him that the deceased Ranchhod Lal was earning about Rs.25-30/- per day but was working for about 15-20 days in a month. A witness Kalu Ram stated that the deceased was earning Rs.30-35/- per day and was selling milk worth Rs.20-25/- per day. With reference to the evidence aforesaid, the Tribunal put an estimate on the monthly income of the deceased at Rs.600/-, taking his earnings at about Rs.30/- per day as a labourer while working 20 days in a month; and did not accept the case of the claimants about the deceased earning separately in milk vending for the same having not been proved in the statement of father of the deceased and not corroborated by any other evidence. The Tribunal took loss of contribution for the family at Rs.400/- per month

leading to a multiplicand of Rs.4,800/- per annum but considered it proper to capitalise by a multiplier of 10 only and, thus, assessed pecuniary loss at Rs.48,000/-; and allowing Rs.15,000/- towards non-pecuniary loss awarded compensation to the claimants in the sum of Rs.63,000/- and allowed interest at the rate of 12% per annum from the date of filing of claim application after adjustment of the amount of Rs.25,000/- received under the interim award.

Assailing the award aforesaid, learned counsel for the claimant-appellants has strenuously contended that the Tribunal has been in error in taking monthly income of the deceased only at Rs.600/- per month and in assessing pecuniary loss by application of lower side multiplier of 10. Learned counsel submitted that there was no reason for not taking minimum monthly income of the deceased at about Rs.1,200/- per month for he was earning at least Rs.600/- in milk vending apart from wages as a labourer. Learned counsel submitted that the award being grossly inadequate deserves suitable modification by upward revision. Per contra, learned counsel for the respondent-insurer has duly supported the impugned award with the submissions that for want of any other material on record, the estimate as put by the Tribunal cannot be said to be falling too short of just compensation and requires no interference.

It may be pointed out that before the record of the Tribunal was transmitted to this Court, Parts D, C & B thereof had already been weeded out on 24.06.2006 with the result that oral and documentary evidence is not available on record. Learned counsel for the parties have also expressed their inability to produce any copy of such evidence. Be that as it may, having regard to the facts and circumstances of the case, it is considered appropriate to decide the matter on the basis of material, whatever, available on record.

The estimate put by the Tribunal on monthly income of the deceased only at Rs.600/- on the assumption that deceased was earning Rs.30/- per day but was working only for 20 days in a month does not appear to be of sound consideration. In the circumstances of the case, though any separate earning of the deceased in milk vending is not established by any cogent evidence but it cannot be said that he was not earning at least Rs.900/- per month in wages at the rate of Rs.30/- per day. With reference to the overall set up, where deceased had the family consisting of himself, wife and parents; and was about 25 years of age, likelihood of his earning minimum Rs.900/- per month in the relevant period of the year 1991 cannot be ruled out. Assessed on this basis, after deducting one-third on personal expenditure of the deceased, average loss of contribution for the claimants could

reasonably be taken at Rs.600/- per month leading to the multiplicand of Rs.7,200/-per annum. Application of multiplier of 10 by the Tribunal remains entirely unjustified and cannot be countenanced. In view of lower side multiplicand and in the overall circumstances of the case, there appears no reason not to apply the multiplier of 17 as provided under the Second Schedule to the Act for the persons in the age group of 20-25 years. With application of multiplier of 17, pecuniary loss stands at Rs.1,22,400/- (7,200 x 17). The three claimants deserve to be allowed Rs.5,000/- each towards non-pecuniary loss and further Rs.1,600/- towards funeral expenses. Hence, the claimants are entitled for compensation minimum in the sum of Rs.1,39,000/- (1,22,400 + 15,000 + 1,600) and the award as made by the Tribunal in the sum of Rs.63,000/-, being grossly inadequate deserves modification.

With this modification, the claimants shall be entitled for a further amount of Rs.76,000/-, over and above the amount allowed by the Tribunal. The Tribunal has allowed interest at the rate of 12% per annum from the date of filing of claim application; however, in view of the enhancement being made herein and in the overall facts and circumstances, it is considered appropriate that on the enhanced amount of Rs.76,000/- the claimants be allowed interest at the rate of 7.5% per annum from the date of filing of claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed; the impugned award is modified; and in place of the amount of Rs.63,000/-, claimants are allowed compensation in the sum of Rs.1,39,000/-. The claimants shall be entitled for interest at the rate of 7.5% per annum on the enhanced amount of Rs.76,000/- from the date of filing of claim application, i.e. 22.08.1991. It shall be required of the insurer-respondent No.2 to deposit the amount now payable under the modified award within 30 days from today with the Tribunal that shall carry out appropriate apportionment amongst the claimants and shall issue necessary orders for disbursement. In the circumstances of the case, parties are left to bear their own costs of this appeal.

(DINESH MAHESHWARI), J.

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